IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

S.B. CIVIL MISC. APPEAL NO.230/2006
Hardev Singh Sandhu

Vs.

Smt.Poonam Kanwar and another

Against judgment and decree dated 04.02.2006 passed by learned Additional District Judge No.3, Jodhpur in Civil Original Suit No. 165/05 (Smt. Poonam Kanwar Vs. Hardev Singh Sandhu and another).

DATE OF JUDGMENT :: 29th May, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. H.S. Sandhu for appellant.
Mr. N.R. Choudhary for respondent No.1.
Mr. H.S. Shekhwat for respondent No.2.

BY THE COURT:

At the request of learned counsel for the parties, the matter has been finally heard and is being disposed of by this order.

The present appeal arises out of the judgment dated 04.02.2006 passed by learned

Additional District Judge No.3, Jodhpur in Civil Misc. Case No.165/05 (Smt. Poonam kanwar Vs. Hardev Singh Sandhu and another) whereby the application moved by the plaintiff under Order 39 Rules 1 and 2 read with Section 151 CPC for temporary injunction has been disposed of with the following order :

> " अत: प्रार्थीया की ओर से प्रस्तुत प्रार्थना पत्र आदेश 39 नियम 1 व 2 सपठित धारा 151 सीपीसी अंशत: स्वीकार किया जाकर अप्रार्थी सं. 1 को मूलवाद के निर्णय तक जरिये अस्थाई निषेधाज्ञा पाबंद किया जाता हैं कि वह वादग्रस्त स्थल पर बिना सक्षम विभाग से अनुमति प्राप्त किए किसी प्रकार का निर्माण कार्य नहीं करे। शेष अनुतोष के सम्बन्ध में प्रार्थीया का प्रार्थना पत्र निरस्त किया जाता हैं।"

The facts relevant for the present appeal are that plaintiff Smt. Poonam Kanwar filed a suit for perpetual and mandatory injunction wherein an application under Order 39 Rule 1 and 2 read with Section 151 CPC for temporary injunction was also filed stating therein that she is the owner of house No.171A, situated at Opposite circuit House, Ajit

Colony, Jodhpur and near to her house, house of defendant is situated, who by covering the set back area raised construction to which the plaintiff raised objection and filed a complaint in the Municipal Corporation. However, the defendant did not stop the construction work. She prayed that the defendant be restrained from making further construction in the premises in question and may not be allowed to use it for commercial purposes. She also prayed that respondent No.2 may also be directed not to regularise the construction made in the set back area.

Defendant No.1 filed reply to the plaint and stated that plaintiff herself is using her house for commercial purposes and denied having made construction on the set back area and lastly prayed that the suit of the plaintiff may be dismissed.

The learned trial Court after hearing learned counsel for the parties, partly allowed the application moved under Order 39 Rule 1 and 2 read with Section 151 CPC and granted

temporary injunction restraining defendant No.1 from making any further construction without prior permission of the competent authority till the disposal of the suit and dismissed the other prayers made in the application.

Learned counsel for the appellant submits that his main grievance is that a notice issued by the respondent No.2 Municipal Corporation for depositing the commercial charges was not in accordance with the law. He further submits that a reply to the notice has already been filed but the respondent No.2 Municipal Corporation, Jodhpur has not yet disposed of the matter. He prays that after considering the reply filed, a proper order may be passed in relation to the notice issued by the Municipal Corporation, Jodhpur.

The further contention of the learned counsel for the appellant is that the order passed by the learned trial court is not in accordance with law inasmuch as the provisions of Section 173A of the Rajasthan Municipalities

Act, 1959 (for short hereinafter referred to as `the Act') have not been properly understood by the learned trial court. It has also been contended that since the plot in question was purchased from the society, therefore, the respondents have no authority whatsoever to stop construction being raised by the appellant on his purchased plot. The contention of learned counsel for the appellant is that in view of Section 173A of the Act, the appellant is free to make construction of his choice and the respondents have no authority to put any restriction on him.

On the other hand, the learned counsel for the respondents have argued that the order passed by the trial Court is legal, just and proper, therefore, requires no interference by this Court.

The learned trial court after considering the matter came to the conclusion that the allotment letter issued by the society to the appellant in relation to the plot where construction was being made contains a

condition that if constructions are to be made on the plot allotted to the appellant then that shall be made according to the rules and regulations of the UIT, Municipal Corporation, Town Planner Department etc. Thus, it appears that the condition in allotment letter is absolutely clear and admits that appellant shall follow the rules and regulations of the U.IT, Municipal Corporation etc.

I have considered the submissions made before me and perused the material available on record.

It is also to be seen that the appellant himself has submitted an application before the respondent No.2 on 19.05.2005 assuring that the construction would be raised after obtaining proper permission from the respondent-Municipal Corporation, Jodhpur. It is also a matter of common knowledge that buildings, markets, residential houses, commercial complexes etc are to be constructed after obtaining proper permission from the concerned authorities. It shall be relevant to

notice here that Section 173 A (2) of the Act, when gone through, takes away the argument of the learned counsel that in view of Sec.173A respondent authority shall have no right to interfere in the construction work over the plot being made by the appellant.

The learned trial court came to the conclusion after discussing the relevant material available on record that the plaintiff-respondent was having strong prima facie case, balance of convenience and irreparable injury in her favour.

After having carefully considered the entire matter, I am of the opinion that the order passed by the learned trial is only to the effect that if the appellant is willing to make construction over the plot then he is required to obtain permission from the competent authority. This order cannot be said to be illegal, arbitrary or unjust so as to require any interference by this Court.

In view of above discussion, I do not find any merit in this appeal. However, in view of submission made by learned counsel for the appellant that the matter with regard to notice dated 27.09.2005, issued by respondent No.2 to which the defendant-appellant has filed reply on 07.10.2005, has not yet been disposed of, the same be directed to be disposed of early, I deem it proper in the facts and circumstances of the case to direct respondent No.2 Municipal Corporation, Jodhpur to take into consideration the reply filed by appellant to the notice referred above and thereafter to pass appropriate orders in accordance with law preferably within a period of one and a half month. At this stage, learned counsel for the appellant submitted that still some more notices issued by the respondent to the appellant require disposal expeditiously. Respondent No.2 may take into consideration that if any other notice is also pending then that may also be considered taking into consideration the reply, if any, filed by the appellant to the notice in accordance with law expeditiously.

Resultantly, the appeal being devoid of merit stands dismissed with the above directions.

(SATYA PRAKASH PATHAK), J.